

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

DO: [REDACTED]

EIN: [REDACTED]

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

You have represented that you have been recognized as exempt under section 501(c)(4) of the Internal Revenue Code. On [REDACTED] you amended your Articles of Incorporation to provide that your purposes are to formulate action which will assist citizens of [REDACTED] and [REDACTED] in developing resources responsibly; preserving natural resources of land, water, and air; educate youth and adults in the counties about safe use of natural resources; promote long-term growth in the area; and defend the principle of individual property rights. In the letter of [REDACTED] your legal representative states that you did not seek exemption under section 501(c)(3) of the Code until you learned that as an organization described in section 501(c)(4) you were not entitled to tax-deductible contributions.

You are a membership organization concerned with the public interest in water, land, and air pollution. You have indicated that you intend to encourage your members to attempt to influence legislation and once addressed the [REDACTED] legislature on a bill affecting confined animal feeding operations. In your letter of [REDACTED], you emphasize that this one time appearance amounted to the expenditure of [REDACTED] hours of time by your legal representatives and stress that your activities primarily involve presenting information before regulatory administrative agencies. Your major expenditures, to date, involve the legal expenses you have incurred in pursuing your agenda through the courts and regulatory agencies.

Your particular agenda concentrates on confined hog operations and their impact on the aquifer; the health concerns of persons involved in agriculture near confined animal operations and the Environmental Protection Agency standards on air. You indicate that confined hog operations have only entered your area in the last three years and you are endeavoring to curtail their operations. You indicate that the State of [REDACTED] has certain rules and regulations governing confined hog operations of a certain size and that these regulations permit

[REDACTED]

citizen interaction. You have presented information about the local areas in hearings involving requests for permits in three counties. You are involved in only one court action. That case involves certain actions taken by the regulatory body to impose stricter standing requirements and eliminating the ability of interested parties and adjacent landowners to request a contested case hearing on a permit application.

You represent that you have [REDACTED] members and fewer than [REDACTED] of your members have land or live near a presently permitted facility. Your members are predominantly farmers who are concerned about the potential contamination of their water supply, the depletion of water in the area, and preserving the quality of air and soil to keep the area productive.

You have also engaged in various educational programs regarding the percolation of water into the aquifer, the safe application of fertilizers and care in livestock waste containment.

Section 501(c)(3) of the Code describes organizations organized and operated exclusively for religious, charitable and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in that section. If an organization does not meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense. It includes relief of the poor and distressed, the advancement of religion, the advancement of education and lessening the burdens of government.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L.Ed. 2d 368 (1988), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Old Dominion Box Co. v. United States, 477 F.2d. 344 (4th Cir. 1973) cert. denied 413 U.S. 910 (1973), the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Benedict Ginsberg, 46 T.C. 47 (1966), the Court held that a nonprofit corporation formed to dredge a navigable waterway fronting the properties of its members did not qualify for exemption under section 501(c)(3) of the Code. This waterway was little used by the general public but its navigability greatly affected the value of members' properties. The Court recognized that the primary beneficiary of the organization's activities was its members and not the general public.

It is incumbent upon an organization seeking a ruling recognizing its tax exempt status to carry the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact. See Harding Hospital, Inc. v. United States, *supra*. As emphasized by the Supreme Court in United States v. Wells Fargo Bank, *supra*, qualification must be proven unambiguously.

Generally, when the activities of an organization seeking exemption under section 501(c)(3) of the Code either directly or indirectly benefit private individuals or a for-profit corporation to more than an insubstantial degree, the organization will not qualify for recognition of exemption under section 501(c)(3). See Old Dominion Box Co. v. United States, supra, Better Business Bureau v. United States, supra, and section 1.501(c)(3)-1(d)(ii) of the regulations. This is again a factual determination.

The information you have submitted indicates that your primary activity involves presenting testimony before a regulatory board. You state that you have members and fewer than of them have land or live near a presently permitted facility. However, your members are predominantly farmers who are concerned about the potential contamination of their water supply, the depletion of water in the area, and preserving the quality of air and soil to keep the area productive. Therefore it is clear that your activities appear to directly serve the economic interests of at least some of your members and works to the detriment of other individuals, persons interested in making their livelihood through confined hog business operations of a certain size. An organization which is primarily serving the economic interests of its members or some of its members does not qualify for recognition of exemption under section 501(c)(3) of the Code. See Old Dominion Box Co. v. United States, supra, and Benedict Ginsberg, supra.

Accordingly, we have concluded that you have not established that you qualify for recognition of exemption under section 501(c)(3) of the Code. Contributions to you are not deductible under section 170. Your exemption from Federal income tax under section 501(c)(4) of the Code remains in effect.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

[REDACTED]

If you do not protest this proposed ruling in a timely manner, it will be considered by the Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Sincerely yours,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]